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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/022,996

12/17/2001

Joseph R. Callol

ACS 57812

4121

24201

7590

04/19/2006

FULWIDER PATTON

6060 CENTER DRIVE

10TH FLOOR

LOS ANGELES, CA 90045

EXAMINER

THALER, MICHAEL H

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/022,996
Filing Date: December 17, 2001
Appellant(s): CALLOL ET AL.

MAILED
APR 19 2006
GROUP 3700

John S. Nagy
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed Feb. 6, 2006 appealing from the Office action mailed Feb. 15, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,607,444	LAM	3-1997
6,270,524	KIM	8-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 8-14 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Lam (5,607,444) in view of Kim (6,270,524). Lam discloses the step of providing a stent having a first section 24 and a second section 25. Lam discloses the limitation "mounting the stent on a catheter having a long balloon and a short balloon wherein the long balloon and short balloon are positioned side by side" for the following two alternative reasons:

First, the catheter shown in figure 7 has a long balloon on the left side of the figure and a short balloon on the right side of the figure. When the stent is in the process of being mounted on the catheter, the balloons would appear as shown in the attached appendix A, noting that the left balloon is to the left of radiopaque markers 35 (as it is in figure 7) and the

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right balloon is to the right of radiopaque markers (as it is in figure 7) and noting that the left balloon is longer than the right balloon. The Lam long balloon and short balloon shown in appendix A are positioned side by side. Dictionary.com defines "side by side" as "next to each other; close together". Appellant's specification does not include an alternative definition for this term. The balloons shown in appendix A are clearly next to each other and close together and are therefore side by side with the left balloon on the left side and the right balloon on the right side.

Second, when the balloons are in the expanded configuration shown in figure 7, the balloons are positioned side by side since the side of the lower portion of the short balloon is positioned by the side of the long balloon because the short balloon curves downwardly near the side of the long balloon as shown in the attached appendix B. Although the sides of the balloons are not coextensive for the entire length of the balloons, the term "side by side" does not require this. For example, two pencils which are parallel to each other are side by side even if their sides are not coextensive for the entire length of the pencils. Further, although the balloons shown in figure 7 are not parallel to each other, the term "side by side" does not require this. For example, if two pencils are next to

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each other but are not parallel (i.e. they converge towards each other to form a V-shape) they are side by side. Although the balloon configuration shown in figure 7 exists after the step of "mounting the stent on a catheter having a long balloon and a short balloon", the claim does not require the steps to be performed in any sequence. In other words, although the step of "wherein the long balloon and short balloon are positioned side by side" is positioned in the claim immediately following the step of "mounting the stent on a catheter having a long balloon and a short balloon", the claim does not require the steps to be performed in this sequence or any other sequence. In general, unless a method claim specifically indicates the order that the method steps are performed, the claim is broad in the sense that the steps of the prior art can be performed in an order different than the order in which they are listed in the claim and still meet the claim limitations. For example, a claim "A method of making a rod wherein the rod is bent and wherein the rod is heated." would be met by a reference which discloses the heating step being performed before the bending step. The meaning of the term "wherein" in claim 8, line 6 is different than the meaning of "when".

Lam also discloses the steps of advancing the catheter and stent through the vascular system to a position proximal of the

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bifurcation 22, positioning the stent so that the second section 25 is aligned with the opening to the side branch vessel (the vessel oriented generally vertically in figure 7), inflating the balloons to radially expand the stent so that the first section 24 is apposes and contacts the main vessel (the vessel oriented generally horizontally in figure 7) proximal of the bifurcation and the second section 25 is apposes and contacts the opening of the side branch vessel and deflating the balloons and withdrawing the catheter. Lam fails to specifically disclose that the first and second sections have a plurality of rings. However, Lam teaches that the stent possesses a tubular structure with some geometric pattern that facilitates shape retention and expansion (col. 5, lines 49-65). Kim teaches that a stent should be constructed of a plurality of rings 14 apparently in order to obtain the advantage of facilitating shape retention and expansion (col. 9, lines 22-33). It would have been obvious to use this construction for the Lam stent so that it would have the above described advantage. As to claim 8, the second section 25 of Lam inherently forms an elliptical cross-section when conforming to the vessel walls 41 (as described in col. 7, lines 8-10) since it expands greatly in the directions to the top and bottom of figure 7 (along the axis of the side branch vessel) but curves around the circumference of

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the side branch vessel (in directions out of the plane of the paper of figure 7). Alternatively, assuming arguendo that Lam fails to inherently disclose an elliptical cross section, Kim teaches that the cross-section of a stent should be elliptical when expanded in order to conform to the inner luminal wall (col. 7, lines 16-25 and col. 10, lines 30-33). It would have been obvious to make the cross-section of the Lam stent elliptical when expanded so that it too would have this advantage. As to claims 11-14, Lam fails to disclose the specific rapid exchange catheter. However, it is old and well known in this art to use rapid exchange catheters to facilitate easy exchange of the catheters. It would have been obvious to use such a catheter in the Lam procedure in order to obtain this advantage. The above well known in the art statement is taken to be admitted prior art because applicant failed to traverse the examiner's assertion (M.P.E.P. 2144.03).

(10) Response to Argument

In response to the arguments regarding the claimed term "side by side", it is submitted that the claims are given their broadest reasonable interpretation consistent with the specification. The meaning of the claimed term "side by side" is "next to each other; close together". This definition is totally consistent with the specification. This claimed term is

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met by Lam in either of two ways as shown in the attached appendixes A and B. For example, if two rectangular pictures are hanging on a wall near each other with the longest dimension of each picture being the horizontal dimension, and one picture is on left while the other picture is on the right, the pictures are positioned side by side even though the longest dimensions (the longitudinal axes) of the pictures are aligned. Similarly, the balloons shown in appendix A are positioned side by side even though the longest dimensions (the longitudinal axes) of the pictures are aligned. Further, the member of each balloon which faces and contacts the corresponding member of the other balloon each other (best seen in figure 7) may be considered to be a side even though its dimension is smaller than the length of the balloon. The two shorter sides of a rectangle are still considered to be sides even though they are shorter than the other two sides. Further, Dictionary.com defines "side" as "A surface of an object, especially a surface joining a top and bottom: *the four sides of a box.*" Thus, in appendix A, the right side of the left balloon is by the left side of the right balloon.

In response to the argument on page 12 of the brief that the Lam distal balloon does not reverse direction one hundred

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and eighty degrees, it is submitted that the claimed term "side by side" does not require this.

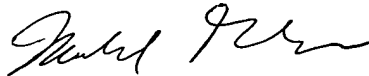
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

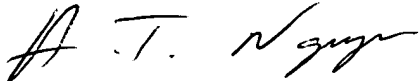
Respectfully submitted,

Michael Thaler
Primary Examiner
Art Unit 3731

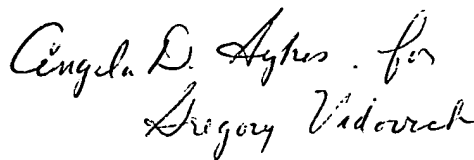


Conferees:

Anhtuan Nguyen
SPE Art Unit 3731



Gregory Vidovich
SPE TC 3700



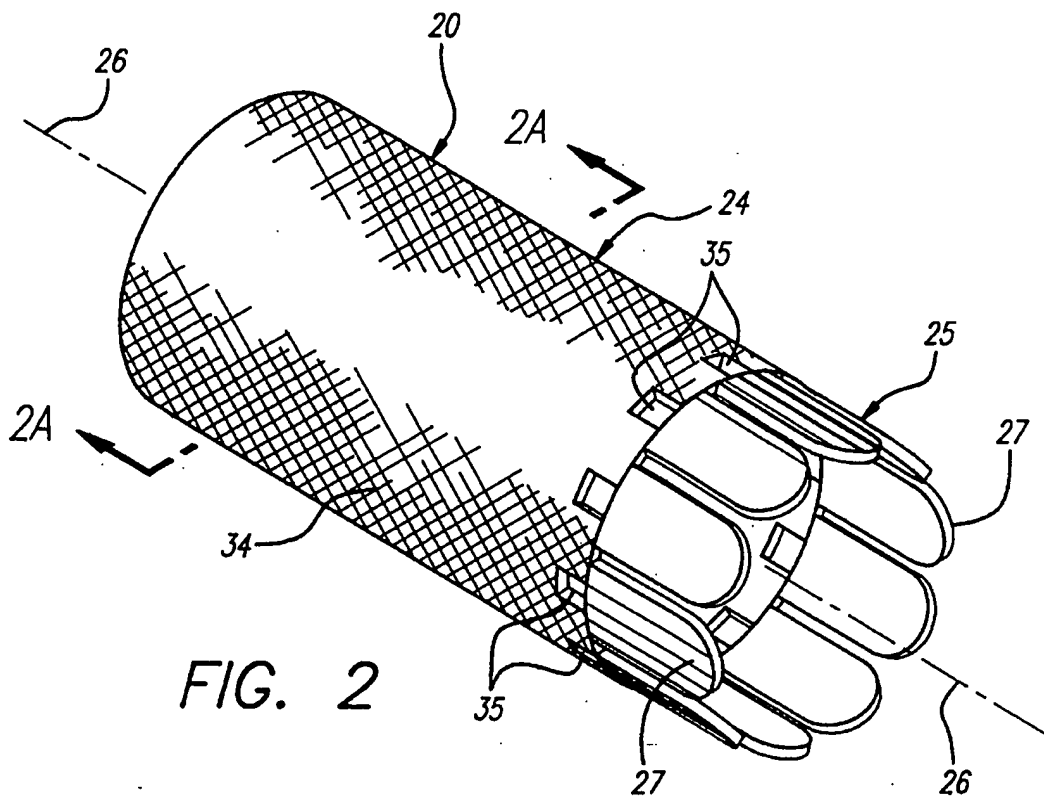
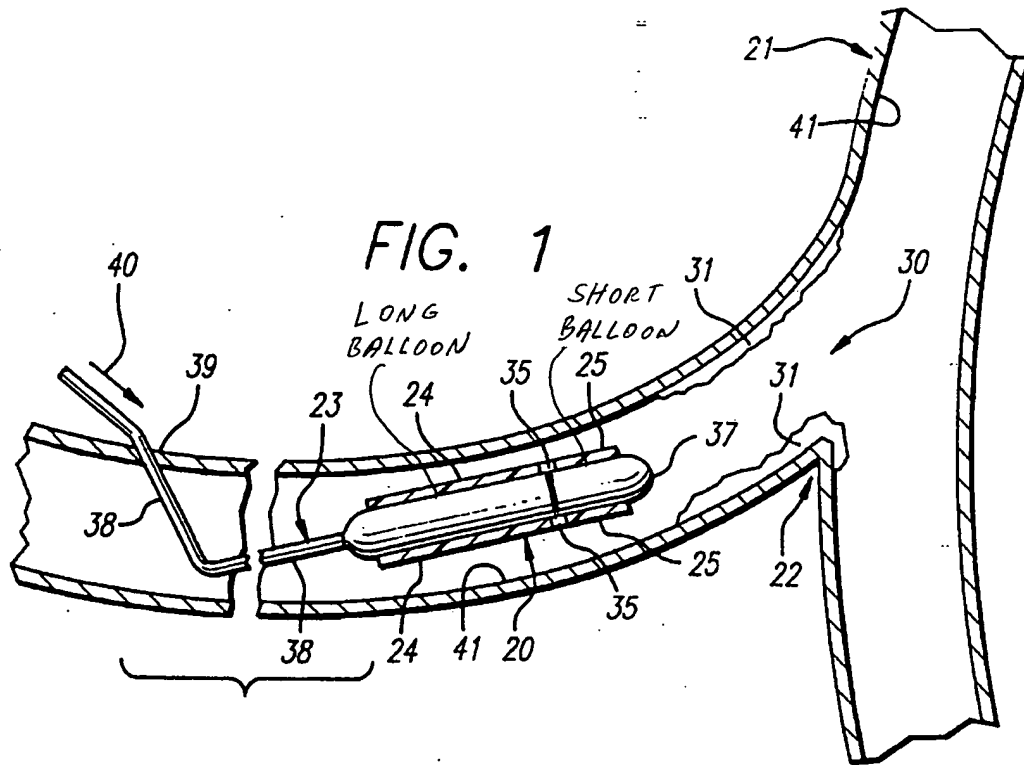


FIG. 6

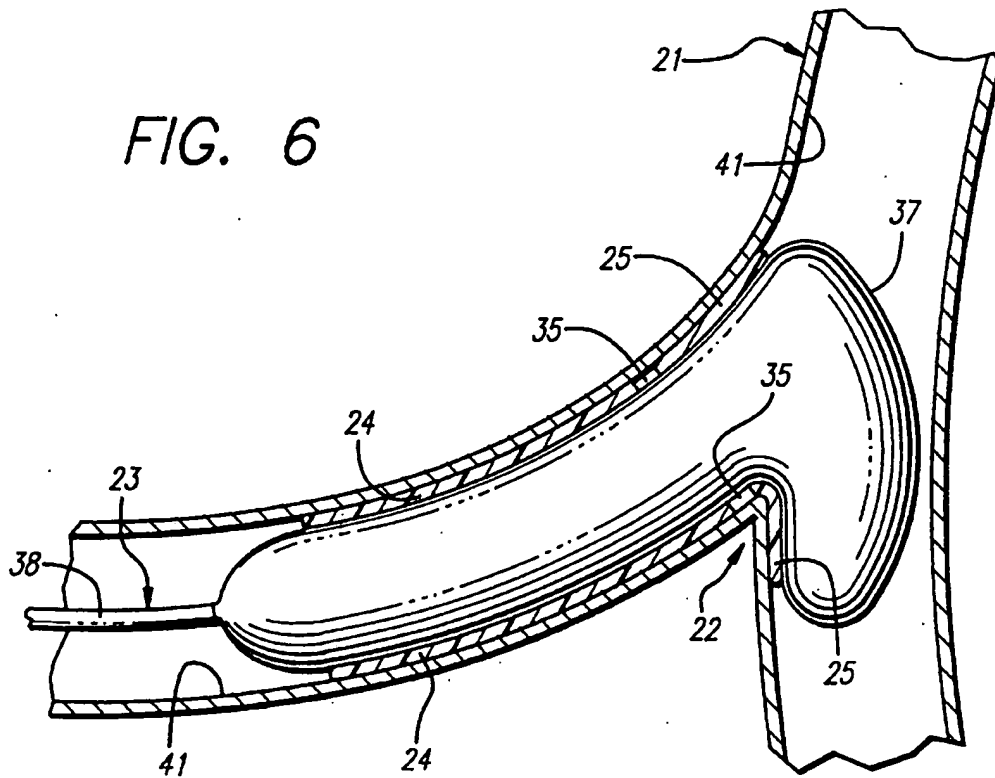


FIG. 7

